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Treasury
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AUSTRALIA

Thank you for the opportunity to respond to the discussion paper on the *Statutory Review of the Consumer Data Right*. The Tech Council of Australia (TCA) supports an approach that maximises the opportunities of data sharing and portability, while managing risk in a targeted and proportionate manner. Therefore, we welcome the opportunity to contribute to this important review.

About the Tech Council of Australia (TCA)

The TCA is Australia's peak industry body for the tech sector. The Australian tech sector is a pillar of the Australian economy, contributing \$167 billion per annum, and employing 861,000 people. This makes the tech sector equivalent to Australia's third largest industry, behind mining and banking, and Australia's seventh largest employing sector.

The TCA represents a diverse cross-section of Australia's technology sector, including data-driven local and global companies and venture capital funds with investments in data-driven enterprises.

Overview

Data is a key commodity of the digital economy. It drives new business models and industries, improves economic efficiency and lifts productivity. The data opportunity for Australian businesses in all industries is significant. Businesses, particularly in key industries such as agriculture, mining and health, can harness data to drive productivity gains, improve innovation of products and services, and facilitate better value-exchanges with customers.¹

Globally, countries have embraced open-data initiatives that enable more transparent, valuable and efficient data flows between consumers, organisations and institutions. This is particularly the case for the financial services industry which has seen initiatives such as the UK's *Open Banking Implementation*², and the EU's *Second Payment Services Directive (PSD 2)*³. Like Australia, in the U.S., the Consumer Financial Protection Bureau is working towards creating a consumer-authorized data sharing market.⁴

Open-data ecosystems generate a considerable boost to the economy, with predictions of 1 to 1.5 percent of GDP in 2030 in the EU, the UK and the U.S. These outcomes affect all market participants, from individuals and SMEs to larger corporations.

However, there is significant potential value that is left inaccessible in current data ecosystems. For instance, the U.S. is constrained by a lack of standardisation, and the E.U. has limited data sharing arrangements. This means that only a fraction of the potential value

¹ [What are the opportunities in data?](#)

² [Open Banking - UK](#)

³ [Payment services \(PSD 2\) - Directive \(EU\) 2015/2366](#)

⁴ [Financial data unbound: The value of open data for individuals and institutions](#)

from open data is captured.⁵ There are also important questions around consumer privacy, consent, data ownership and data security that must be addressed.

The TCA strongly supports a thoughtful and proportionate approach to data sharing and portability that would enable Australia to maximise the opportunities presented by the CDR, while mitigating risks to consumers and organisations.

To date, adoption and use of CDR data sharing has been relatively low, despite being launched nearly two years ago in the banking sector. Some data holder organisations are yet to be fully compliant with the requirements. There are a number of vendors, but few consumer services are offered in the market. This review presents an excellent opportunity to take stock of the reasons for this, and to incorporate any lessons learned in designing the next stage of the roll-out process.

Our submission proposes a road map for CDR reform, consisting of immediate actions to ensure that the CDR is workable before it is expanded, and longer term considerations to expand the scope and benefits of the CDR.

Immediate actions

1. Review and address inconsistencies with existing data sharing and accreditation regimes within the Australian data ecosystem.
2. Move to a sector-agnostic, use-based approach for CDR.
3. Protect consumers and reduce regulatory burden through practical, interoperable rules.

Long term considerations

4. Identify how better access to Government data could improve the quality of data assets or analysis supported under the scheme
5. Explore options to provide consumers with direct access to their own data while protecting privacy and security.
6. Expand the CDR to write-access, drawing on lessons from international experiences.

1. Review and address inconsistencies with existing data sharing and accreditation regimes

Prior to CDR rollout, service providers were already sharing data extensively with each other, consumers and major institutions such as government agencies. B2B (business-to-business) data sharing helps service providers develop new products and services, establish partnerships, and facilitate service delivery. B2C (business-to-consumer) data sharing creates more personalised and transparent services for consumers, and B2G (business-to-government) data sharing encourages public interest analysis and data-driven policy-making.

There are also important data flows between service providers and intermediaries. For instance, accounting software platforms allow small businesses to connect their bank feeds to their accounts. This provides small businesses with real-time visibility on transactions, and therefore, revenue and cash flow.

These data flows fall under data sharing and accreditation arrangements. For instance, data flows within the telecommunications industry are governed by the *Telecommunications Sector Security Reforms* regime (TSSR). In addition, accreditation frameworks for accredited

⁵ [Financial data unbound: The value of open data for individuals and institutions](#)

providers such as the ATO's *Digital Services Provider (DSP) Operational Framework* as well as ABSIA's *Security Standard for Add-on Marketplaces (SSAM)* outline best practice requirements for data flows, particularly around security.⁶

Continuing the CDR rollout without first understanding how data is being shared, and how service providers are accredited, will negatively impact and complicate existing data sharing and accreditation arrangements. This in turn is disincentivising service providers from participating in the rollout. This runs counter to the purpose of the CDR, which is to serve as a superior data portability arrangement that encourages data innovation, and provides greater control to consumers over their data. Interfering with existing data sharing and accreditation arrangements leads to greater compliance costs which are felt acutely by SMEs that rely on using data.

To reduce unnecessary regulatory burden and avoid impeding existing data flows, the TCA recommends that Government review and amend the CDR requirements to ensure that they do not conflict with, or impede, current data sharing and accreditation arrangements.

In the TCA's view, there are conflicts between the CDR regime and existing data sharing and accreditation regimes, as well as instances where the CDR regime has unintentionally imposed a more regressive model than existing practice.

For instance, accounting software platforms have raised concerns that restrictions imposed by the CDR on third-party CDR recipients may interrupt existing data flows between customers and service providers, and nullify existing best-practice governance frameworks.

These platforms connect customers such as SMEs with banks and third-party service providers that provide customers with apps to assist with a variety of tasks such as inventory management. Under the current CDR regime, these platforms can receive CDR data from consumers, transform that data into accounting data, and facilitate permissioned third party access to a consumer's transformed accounting data.

In the past, these platforms have disclosed materially enhanced accounting data to third-party service providers that have been accredited under existing, best-practice governance frameworks. Additional restrictions on third-party providers introduced by the CDR would unnecessarily drive costs and complexity barriers that do not exist elsewhere in permissioned transfers of consumer data.⁷

This example shows how the continuation of the current CDR rules may drive compliance costs, and reduce the availability of innovative products and services for consumers.

Another example is that the use of CDR data by an Accredited Data Recipient (ADR) is restricted to providing a specific service to a specific customer at a specific point in time. The ADR is not able to use that data or any data derived from it for risk management purposes, for example, or for any other purpose, such as a related service, even if the customer asks for it. The data or any data derived from it cannot be shared with third parties or used for other valid purposes. The definition of derived data is very broad, and could include, for example, the fact that a particular borrower has met underwriting criteria for a loan based on CDR data sharing.

In addition, the mandatory CDR in-app consent flow for consumers to agree to CDR data sharing is a lengthy and unappealing process. Consumers need to provide consents to both

⁶ [ABSIA's Response to CDR Rules Consultation](#)

⁷ [Consultation on how best to facilitate participation of third party service providers](#)

the data holder and the data recipient, clicking through multiple detailed screens and selection menus, with various warning language displayed on the risks of sharing their data. This flow appears designed to deliberately reduce the likelihood that a consumer will take advantage of data sharing. As a result, some TCA members have been reluctant to invest in developing services using CDR data.

Poor design of consumer rights requirements can inadvertently reduce choice and innovation for consumers. For example, during 2016 to 2019, the EU's *General Data Protection Regulation* (GDPR) was found to have induced the exit of about a third of available apps on the Google Play Store, and reduced consumer surplus and aggregate app usage on the Google Play Store by a third.⁸

To identify the full suite of issues in current approaches that are deterring organisations from participating in the scheme, or reducing access to services and data sharing compared with practice prior to the introduction of the CDR, we recommend that Government consult widely with industry and other stakeholders, and compare Australia's model with industry best practice and international approaches.

To avoid such consequences, and ensure that the opportunities of the CDR are reaped, we recommend that any further regulatory changes respond to and be seen in the context of the gaps identified.

We encourage Government to focus on:

1. **The effect of the CDR on making transactions unwieldy and less desirable:** The CDR duplicates existing data sharing arrangements, and poses restrictions and requirements on data flows that may disincentivise participation in the rollout.
2. **Conflicts between the accreditation process and other regulatory regimes:** Service providers are subject to multiple accreditation processes which increase the barriers to entry, reduce competition between service providers, and stifle innovation.
3. **The impact of the CDR on existing data sharing and accreditation arrangements:** Increased compliance costs are either absorbed by providers, or passed on to consumers, or reflected in services not being provided at all. We recommend that Government focus on the economic impacts of the rollout on service providers, consumers and the broader digital economy.
4. **The difficulty of the accreditation process:** Difficult and time-intensive accreditation processes exclude service providers, and stifle innovation by increasing compliance costs and the costs of foregone opportunities. FinTech Australia estimated that the cost of CDR accreditation is between \$50,000 and \$100,000 in annual compliance fees.⁹
5. **The difficulty of providing consent to share CDR data:** Unwieldy transactions are a significant issue in the consumer sector, where providing consent to share CDR data requires customers to navigate a complex interface containing multiple selection menus, choices and warnings throughout. This is not a workable model for most applications, sparing once-off high value processes such as mortgage applications.

⁸ [GDPR and the Lost Generation of Innovative Apps](#)

⁹ [Senate Select Committee on Financial Technology and Regulatory Technology](#)

2. Move to a sector-agnostic, use-based approach

The TCA recommends moving away from the current sector-based model toward a sector-agnostic, use-based model that is standardised by data use cases such as online payments and mortgage applications. The premise behind this approach is that organisations with similar data use cases are more alike with respect to the CDR compared to organisations in the same sector with different use cases. We recommend that these use cases be identified through consultation with industry who have the best knowledge of how data is used across different sectors.

Such an approach would strike the right balance between consistency and flexibility to recognise differences between sectors. This should be the default, with sector specific rules by exception, as determined by the results of the review of existing data sharing and accreditation regimes.

If the review does not find sufficient net benefit for rolling out the CDR in a particular sector, we recommend that a decision be made for the CDR to not apply in that sector. For instance, in the telco sector, consumers are already able to switch easily between providers, taking usually a matter of 10-15 minutes. This shows that consumers in the telco sector do not face the same issues as those in other sectors.

The review should identify and acknowledge these factors, as well as the dynamics and business models of different industries, and make an assessment to roll out the CDR based on these factors.

The current sector-based approach to the CDR has three main issues:

1. **Regulatory uncertainty:** Under the current regime, companies are told to plan for the CDR, but do not know until the end of a very long, multi-stage process what this might involve. This causes uncertainty and fears around potential compliance costs.
2. **Inefficient approach to scoping:** a sector-based approach without guiding principles makes it difficult to know what to look for during initial scoping. It also misses opportunities to find complementary datasets across different sectors. Some sectors may share similar issues, which means that such an approach may be inefficient.
3. **Over-standardisation:** Without other guidance, it is tempting to fill the gap by copying past examples. But sectors like telco, energy and banking need distinct approaches as they hold different information and already give consumers certain information which can be brought easily into a CDR system.

A sector-agnostic, use-based approach would:

1. **Give businesses certainty:** Businesses would better understand what Government is searching for and what future requirements are likely to be. Time saved on scoping can be spent designing rules that are practical and targeted for each affected sector.
2. **Give Government direction:** Rather than needing to look through every data set for potential value, principles would help Government know what it is looking for. This could also simplify the currently very long and multi-staged scoping process.
3. **Create opportunities faster:** Removing arbitrary limitations on what sectors are and are not included could unlock opportunities for high-value innovative products faster, especially if the CDR is expanded to include 'write-access'.

3: Protect consumers and reduce regulatory burden through practical, interoperable rules

The TCA are strong supporters of effective privacy protections. Protecting user data underpins Australians' confidence in online platforms and their willingness to share and interact with their own data, and is a key determinant of the CDR's success. Wherever possible, we suggest harmonising data security and privacy obligations with existing systems and international standards. With many Australian businesses operating overseas, adopting internationally consistent rules minimises compliance burden.

Regulatory burden is a significant barrier to wider business involvement in the CDR as accreditation processes are highly complex and time consuming. Making accreditation simpler and harmonising would lower barriers to small tech sector businesses, getting more involved. As with any regulatory obligations related to the CDR, this will need to be implemented in a flexible, principles-based manner and distinguish consumer information and business' proprietary information ('transformed data') appropriately.

Moving to a use-based approach would also help to manage the regulatory burden and uncertainty when Government is considering new data sets to include. As mentioned earlier, a sector-agnostic approach that is backed by clear principles-based objectives would streamline the early scoping process. This would allow for an earlier focus on ensuring any obligations are as practical as possible.

The TCA recommends that the CDR review focuses on addressing the key issues outlined above to firstly bed down the effective operation of the scheme.

However, in the longer term, Government should also consider complementary measures that could improve the quality of data and data analysis used across the economy.

4. Consider how better access to government data can improve data quality

The TCA believes that enabling better access to public data, via CDR or other means, should remain a priority to help improve the utility and quality of datasets and analysis across the economy. We recommend that the CDR framework include Government datasets. Doing so would greatly expand opportunities for Australian businesses to deliver innovative products and services, promote greater trust and confidence in government, and improve the efficiency, effectiveness and coverage of services in the public and private sectors.

There are two key kinds of government datasets that would be useful. These include:

1. Datasets that would complement private sector data used in CDR, e.g. Linked Employer-Employee Database (LEED)¹⁰, tax data, Multi-Agency Data Integration Project (MADIP) data¹¹ and payments data etc.
2. ABS datasets that would be useful for weighting or supplementary analysis (e.g. microdata in the census).

Action 4.1: Make all types of government data accessible

To ensure that individuals and organisations can reap the full benefits of government data, the TCA recommends that Government make all types of public data more accessible for all Australians.

¹⁰ [Linked Employer-Employee Database](#)

¹¹ [Multi-Agency Data Integration Project \(MADIP\)](#)

In particular, we recommend that detailed microdata be made more widely available, since it can unlock deeper insights compared to aggregate data and enable more sophisticated analyses that can benefit private, public and social sector organisations. Currently, only certain bodies such as Australian universities, and individuals such as university students and researchers with at least three years of quantitative research experience are allowed to access the detailed microdata that is made available through DataLab.¹²

As a platform for *'high end users who want to undertake real time complex analysis of detailed microdata'*, DataLab prevents other individuals and organisations who may not meet their stringent criteria, such as nonprofits and private sector organisations, from undertaking research and using the microdata. In particular, certain datasets such as the BLADE and MADIP detailed microdata datasets are only available to government employees, government contractors and individuals sponsored by Government, as well as academics and researchers from public policy research institutes.¹³

In addition, DataLab's model for accessing data can be cumbersome and slow. Interested organisations must submit a project proposal and a request. The ABS must approve the request, provide the data sample, and approve the analysis performed on it in DataLab. In addition, the ABS requires that all outputs be cleared before release. This means that the full process can take many weeks, which makes it difficult for organisations who are trying to solve time sensitive issues, or develop new products or services.

The TCA also recommends that Government make government data available at an accessible price point for consumers. Doing so would unlock the value of government data for a much larger pool of users, and encourage greater use of government data across the economy. This is supported by an Australian study of key statistical datasets that found that the benefit of making one dataset available for free was equivalent to five times what the government could charge for it, as well as the European Union's Directive that government data should be made available for no more than the marginal cost of distribution.¹⁴

Action 4.2: Prioritise and prepare datasets that are of highest value to users

The TCA recommends that Government prioritise and prepare datasets that are of highest value to users, and that support a wide range of use cases. We encourage Government to engage with data users and industry, and identify the datasets that have the greatest public value, and concentrate on them by improving the quality, accessibility, and usability of those datasets, while planning to make the rest of their data more open and usable over time. In particular, we encourage Government to focus on 'core reference data' or 'national information infrastructure' - data that is broadly used for business and government operations, such as demographic census data, address data and transportation data.

¹² [DataLab](#)

¹³ [DataLab](#)

¹⁴ [Open Data for Sustainable Development](#)

5. Explore options to provide with consumers direct access to their own data while protecting privacy

The current CDR model does not allow consumers to have direct access to their own data due to privacy and security concerns.

In the longer term, the TCA recommends exploring options to provide consumers with greater access to their own data. This could provide consumers with more control over their own information, and enhance confidence by letting them know what data is being collected, and how it is being used and stored.

This is consistent with the approach in other regulatory frameworks such as the Australian Privacy Principles (Principle 12) which includes the right to request personal data.¹⁵ Australians can request and access personal information from other organisations. For instance, the tax system allows consumers to request their own personal data from the ATO.

A future review of the CDR could consider options including staged implementation to start with 'read access'. Providing consumers with read access over their data has fewer risks compared to write-access. Write-access data can be incorrectly entered, modified or deleted, and exposed to privacy and security risks. Such an approach would enable consumers to immediately benefit from having 'read-access' over their data, which is useful for a variety of purposes such as personal financial management, account aggregation and streamlining loan applications.

6. Expand the CDR to 'write-access', drawing on lessons from international experiences

The TCA recommends that Government expand the CDR to allow for 'write-access', which enables accredited persons to initiate actions, such as initiating payments, swapping services or opening new bank accounts, on a consumer's behalf. We recommend that any decision to expand the CDR to 'write-access' data be viewed in the context of existing privacy and security obligations that may be identified in the review of existing regulations around data sharing and accreditation. For instance, businesses operating in the telco industry are subject to the Telco Act, which outlines security obligations that may conflict with expanding the CDR to 'write-access' data.

Such an approach would create new tech sector opportunities, increase the range of products and services available, and support Australian consumers. FinTech businesses in particular have flagged that allowing consumers to externally manage their finances would allow for true innovation and greater consumer control.

Consumers that have both read and write access have greater control over their data, and are more informed about their current service provider's offerings and how they compare with other service providers. Most importantly, they are able to make decisions about their current service arrangements by authorising their new provider to initiate an action immediately. This saves consumers from going through the laborious processes of interacting with their current service providers to set up new accounts, cancel payments or switch providers etc.

Under 'write-access', organisations are incentivised to offer more competitive services and products to encourage potential customers to swap to their services. This increases

¹⁵ [Australian Privacy Principles](#)

competition within the ecosystem, and promotes innovation, ultimately unlocking the full potential of the CDR.

Experiences from the UK and New Zealand offer useful lessons to consider in expanding to a two-way 'read-and-write' access system. In particular, Government would need to consider how to allow start-ups to develop innovative new products without being captured by regulatory regimes targeting the actual data owner (e.g. Anti-Money Laundering and Anti-Terrorism Financing).

We appreciate the opportunity to contribute feedback to the ideas proposed and look forward to ongoing dialogue.

Yours sincerely,



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